

IC 3-11.5-5

Chapter 5. Counting of Absentee Ballots Cast on Paper Ballots

IC 3-11.5-5-1

Applicability of chapter; counties of application

Sec. 1. (a) This chapter applies in a county only if the county election board adopts a resolution making this chapter applicable in the county.

(b) A copy of a resolution adopted under this section shall be filed with the election division.

(c) A county election board may not adopt a resolution under this section less than:

- (1) sixty (60) days before an election is to be conducted; or
- (2) fourteen (14) days after an election has been conducted.

(d) A resolution adopted under this section takes effect immediately and may only be rescinded by the unanimous vote of the entire membership of the county election board.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2. Amended by P.L.2-1996, SEC.202; P.L.3-1997, SEC.335.

IC 3-11.5-5-2

Applicability of chapter; paper ballot cast votes

Sec. 2. This chapter applies to the counting of absentee ballots cast on paper ballots.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-3

Time for counting ballots

Sec. 3. Immediately after:

- (1) the couriers have returned the certificate from a precinct under IC 3-11.5-4-9; and
- (2) the absentee ballot counters or the county election board have made the findings required under IC 3-11-10 and IC 3-11.5-4 for the absentee ballots cast by voters of the precinct and deposited the accepted absentee ballots in the envelope required under IC 3-11.5-4-12;

the absentee ballot counters shall, in a central counting location designated by the county election board, count the absentee ballot votes for each candidate for each office and on each public question in the precinct.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-4 Repealed

(Repealed by P.L.230-2005, SEC.91.)

IC 3-11.5-5-5

Uninterrupted vote count procedures

Sec. 5. To minimize delay, the absentee ballot counters shall continue the count without interruption until all absentee ballots for the precinct are canvassed and the certificates required by this

chapter are prepared and delivered to the person entitled to receive the certificates.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-6

Manner and order of counting ballots

Sec. 6. The ballots shall be counted by laying each ballot upon a table in the order in which the ballot was opened under IC 3-11.5-4-12.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-7

Ballot count; reading of names

Sec. 7. During the counting of the votes, one (1) of the absentee ballot counters shall read the name of the candidates voted for from the ballots. A:

(1) member of the county election board who is not a member of the same political party as the absentee ballot counter; or

(2) representative designated by the member;

reading the names shall view the ballots as the names are read.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-8

Vote counting; protest of ballot

Sec. 8. During the counting of the votes:

(1) an absentee ballot counter performing the counting;

(2) a member of the county election board; or

(3) a representative designated by the members;

may protest the counting of any ballot or any part of a ballot.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-9

Marking of protested ballot

Sec. 9. If a ballot or any part of a ballot is protested, an absentee ballot counter immediately shall write on the back of the protested ballot the word "counted" or "not counted", as appropriate.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-10

Protested votes referred to county election board

Sec. 10. If the absentee ballot counters cannot agree whether to count a ballot following a protest under section 8 of this chapter, the question shall be referred to the county election board for a decision.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-11

Absentee counters signing of protested ballots

Sec. 11. Following a decision by the absentee ballot counters or the county election board, the absentee ballot counters shall officially sign each protested ballot.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-12

Separate counting of ballots from other precincts

Sec. 12. An absentee ballot counter may not count absentee ballots for a precinct under this chapter while counting absentee ballots for any other precinct.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-13

Counting of ballots by two sets of vote counters

Sec. 13. (a) This section applies if at least two (2) sets of absentee ballot counters in a county are counting absentee ballots under this chapter.

(b) A set of absentee ballot counters may count absentee ballots from a precinct while another set of absentee ballot counters is counting absentee ballots from another precinct in the county if each set of counters counts the ballots in compliance with section 7 of this chapter.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-14

Minor errors on ballot; partial ballot invalidity and ballots not to be counted

Sec. 14. (a) This section applies to the counting of write-in absentee ballots for:

- (1) a federal office received under 42 U.S.C. 1973ff; and
- (2) a federal office, state office, or public question under IC 3-11-4-12(a).

(b) If a voter writes an abbreviation, a misspelling, or other minor variation instead of the correct name of a candidate or political party, that vote shall be counted if the intent of the voter can be determined.

(c) If a voter casts a ballot under this section for President or Vice President and writes in the name of a candidate or political party that has not certified a list of electors under IC 3-10-4-5, the vote for President or Vice President is void. The remaining votes on the ballot may be counted.

(d) IC 3-12-1-7 applies to a ballot subject to this section.

(e) A ballot subject to this section may not be counted if:

- (1) the ballot was submitted from within the United States;
- (2) the voter's application for a regular absentee ballot was received by the circuit court clerk or board of registration less than thirty (30) days before the election;
- (3) the voter's completed regular state absentee ballot was received by the circuit court clerk or board of registration by the deadline for receiving absentee ballots under IC 3-11.5-4-7; or
- (4) the ballot subject to this section was not received by the circuit court clerk or board of registration by the deadline for receiving absentee ballots under IC 3-11.5-4-7.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2. Amended

by P.L.198-2005, SEC.14.

IC 3-11.5-5-15

Certificate of absentee vote count

Sec. 15. When all the votes have been counted, the absentee ballot counters shall prepare a certificate stating the number of votes that each candidate received for each office and the number of votes cast on each public question.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-16

Entry and memorandum of vote count

Sec. 16. The number of votes that each candidate and public question received shall be written in words and numbers. The absentee ballot counters shall prepare a memorandum of the total votes cast for each candidate and on each public question and ensure that each member of the county election board receives a copy of the memorandum.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-17

Delivery of certificates and tally papers

Sec. 17. The absentee ballot counters shall deliver the certificates prepared under section 15 of this chapter and the tally papers to the county election board immediately upon the tabulation of the vote in each precinct.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-18

Securing ballots, certificates, and tally papers; delivery

Sec. 18. As soon as the ballots have been counted, the absentee ballot counters shall in the presence of the county election board do the following:

- (1) Place in a strong paper envelope or bag the following:
 - (A) All ballots, voted and not voted, together with all protested and uncounted ballots.
 - (B) One (1) copy of each of the certificates prepared under IC 3-11.5-4-1 and IC 3-11.5-4-8.
 - (C) The tally papers.
- (2) Securely seal the envelope or bag.
- (3) Have both absentee ballot counters initial the envelope or bag.
- (4) Plainly mark on the outside of the envelope or bag, in ink, the precinct for which the absentee ballots were cast.
- (5) Deliver the envelope or bag to the circuit court clerk.
- (6) Notify the circuit court clerk of the number of ballots placed in the envelope or bag.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-19

Oath of ballot counters

Sec. 19. Upon delivery of the envelope or bag to the circuit court clerk, each absentee ballot counter shall take and subscribe an oath before the clerk stating that the counter:

- (1) securely kept the ballots and papers in the envelope or bag;
- (2) did not permit any person to open the envelope or bag or to otherwise touch or tamper with the ballots; and
- (3) had no knowledge of any other person opening the envelope or bag.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-20**Filing of ballot counter's oath**

Sec. 20. The circuit court clerk shall file the oath taken under section 19 of this chapter with the clerk's other election documents.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-21**Secure storage of ballots**

Sec. 21. The circuit court clerk shall place the envelope or bag in a receptacle provided by the county executive with two (2) different locks.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-22**Locks on stored ballots**

Sec. 22. The circuit court clerk shall do the following:

- (1) Lock the receptacle provided under section 21 of this chapter.
- (2) Retain one (1) key to one (1) lock of the receptacle.
- (3) Give one (1) key to the other lock of the receptacle to the member of the county election board who is not a member of the same political party as the clerk.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-23**Time of ballot storage**

Sec. 23. The circuit court clerk shall preserve the receptacle containing the envelope or bag in the clerk's office for the period required under IC 3-10-1-31 or IC 3-10-1-31.1.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2. Amended by P.L.14-2004, SEC.143.

IC 3-11.5-5-24**Time for retention of stored ballots when election contested**

Sec. 24. If the election is contested, the clerk shall preserve the receptacle containing the envelope or bag as long as the contest is undetermined. During those periods the clerk shall keep the receptacle securely locked, subject only to an order of the court trying a contest.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-25

Destruction of stored ballots

Sec. 25. When permitted under IC 3-10-1-31 or IC 3-10-1-31.1, the clerk and a county election board member of the opposite political party shall remove the envelope or bag from the receptacle and destroy the envelope or bag.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2. Amended by P.L.14-2004, SEC.144.

IC 3-11.5-5-26

Contract with educational institution for disposal of ballots

Sec. 26. A county election board may contract with a state educational institution (as defined in IC 20-12-0.5-1) to dispose of the ballots. The contract must provide that:

- (1) the ballots will be used by the state educational institution to conduct election research; and
- (2) the state educational institution may not receive any ballots under this subsection until the period for retention under IC 3-10-1-31 or IC 3-10-1-31.1 has expired.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2. Amended by P.L.14-2004, SEC.145.

IC 3-11.5-5-27

News media certificate of election results

Sec. 27. Immediately upon completion of the vote count, the absentee ballot counters shall make and sign a certificate for the news media showing the total number of absentee ballot votes received by each candidate and on each public question in the precinct.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-28

Delivery of news media certificate

Sec. 28. The absentee ballot counters shall deliver the certificate to the circuit court clerk as soon as the certificate is completed. The circuit court clerk shall deliver the certificate made for the news media to any person designated to receive the certificate by the editors of the newspapers published in the county or by the managers of the radio and television stations operating in the county immediately upon the completion of the certificate, but not before the closing of the polls.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.

IC 3-11.5-5-29

Release of information concerning absentee ballot counts before close of polls other than as provided by chapter

Sec. 29. (a) This section applies to a person who observes or performs any of the following under this chapter:

- (1) The counting of absentee ballots.
- (2) The proceedings of absentee ballot counters or the county election board regarding a protested ballot.
- (3) The preparation of a certificate by absentee ballot counters.
- (4) The delivery of a certificate to the circuit court clerk or county election board.

(b) Except as prescribed by this chapter, a person shall not provide any other person with information concerning the number of votes:

- (1) a candidate received for an office; or
- (2) cast to approve or reject a public question;

on absentee ballots counted under this chapter before the closing of the polls.

As added by P.L.3-1993, SEC.176 and P.L.19-1993, SEC.2.